

## **IC 4-4-8**

### **Chapter 8. Industrial Development Program and Fund**

#### **IC 4-4-8-1**

##### **Definitions**

Sec. 1. As used in this chapter:

"Department" means the department of commerce.

"Enterprise zone" means an enterprise zone created under IC 4-4-6.1.

"Governing body" means the legislative body of a city, town, or county, an economic development commission, or any board administering the affairs of a special taxing district.

"Industrial development program" means any program designed to aid the growth of industry in Indiana and includes:

- (1) the construction of airports, airport facilities, and tourist attractions;
- (2) the construction, extension, or completion of sewerlines, waterlines, streets, sidewalks, bridges, roads, highways, public ways, and information and high technology infrastructure (as defined in this section);
- (3) the leasing or purchase of property, both real and personal; and
- (4) the preparation of surveys, plans, and specifications for the construction of publicly owned and operated facilities, utilities, and services.

"Information and high technology infrastructure" includes, but is not limited to, fiber optic cable and other infrastructure that supports high technology growth and the purchase and installation of such fiber optic cable and other infrastructure.

"Minority enterprise small business investment company" means an investment company licensed under 15 U.S.C. 681(D).

"Qualified entity" means a city, town, county, economic development commission, or special taxing district.

"Small business investment company" means an investment company licensed under 15 U.S.C. 691 et seq.

"State corporation" means the state corporation (as defined by IC 6-3.1-5-2).

*As added by Acts 1980, P.L.8, SEC.6. Amended by P.L.23-1983, SEC.2; P.L.19-1988, SEC.1; P.L.8-1989, SEC.13; P.L.227-1999, SEC.1.*

#### **IC 4-4-8-2**

##### **Creation; control and administration; rules; personnel; findings**

Sec. 2. (a) The general assembly finds that:

- (1) areas in Indiana have insufficient employment opportunities and insufficient diversification of industry;
- (2) these conditions are harmful to the health, prosperity, economic stability, and general welfare of these areas and, if not remedied, will be detrimental to the development of these areas; and

(3) the use of money under this chapter and the fostering of industrial development programs serves a public purpose.

(b) There is created a fund to be known as the industrial development fund from which fund loans may be made to qualified entities, small business investment companies, and the state corporation in accordance with this chapter and the rules adopted under it. The administrative control of the fund and the responsibility for the administration of this chapter are vested jointly in the state board of finance and the department. The department, subject to the approval of the state board of finance, may adopt rules for the proper administration of the fund and this chapter. The department, subject to the approval of the state budget agency, may employ personnel as necessary for the efficient administration of this chapter.

*As added by Acts 1980, P.L.8, SEC.6. Amended by P.L.23-1983, SEC.3; P.L.19-1985, SEC.1.*

### **IC 4-4-8-3**

#### **Appropriation; nature of fund; loans; amount restriction; limitations**

Sec. 3. (a) There is appropriated to the industrial development fund from the general fund of the state two million dollars (\$2,000,000). This sum does not revert to the general fund but constitutes a revolving fund to be used exclusively for the purpose of this chapter. The department, subject to the approval of the state board of finance, may order the auditor of state to make any approved loan from the revolving fund to any qualified entity (including the purchase of bonds of the qualified entity), any small business investment company, minority enterprise small business investment company, or the state corporation.

(b) A qualified entity may borrow funds from the department under this chapter and shall use the loan proceeds for the purpose of instituting and administering any approved industrial development program. The combined amount of any such outstanding loans to any one (1) program may not exceed one million dollars (\$1,000,000). However, the one million dollar (\$1,000,000) restriction in this subsection does not apply to an approved industrial development program in an economic development district established by a qualified entity under IC 6-1.1-39. A loan made under this chapter to an economic development commission is not a loan to or an obligation of the qualified entity that formed the commission, if the repayment of the loan is limited to a specified revenue source under section 8 of this chapter.

(c) A small business investment company, minority enterprise small business investment company, or the state corporation may use the loan proceeds for any lawful purpose.

(d) Notwithstanding any other law (including IC 5-1-11) the loan to a qualified entity under this section may be directly negotiated with the department without public sale of bonds or other evidences of indebtedness of the qualified entity.

*As added by Acts 1980, P.L.8, SEC.6. Amended by P.L.23-1983, SEC.4; P.L.10-1984, SEC.1; P.L.19-1985, SEC.2.*

#### **IC 4-4-8-4**

##### **Industrial development program**

Sec. 4. Any qualified entity may institute and administer any industrial development program that is approved by ordinance or resolution adopted by the governing body of the qualified entity and approved by the department.

*As added by Acts 1980, P.L.8, SEC.6.*

#### **IC 4-4-8-5**

##### **Loans to qualified entities; conditions**

Sec. 5. (a) The state board of finance and the department shall authorize the making of a loan to any qualified entity under this chapter only when all of the following conditions exist:

(1) An application for the loan has been submitted by the qualified entity, in a verified petition, to the state board of finance and the department in such manner and form as the state board of finance and the department direct, setting forth therein:

(A) the need for the program and the need for funds for instituting and administering the program;

(B) an engineering estimate of the cost of the proposed program acceptable to the state board of finance and the department;

(C) the amount of money needed; and

(D) such other information as is requested by the state board of finance and the department.

(2) The proposed program has been approved by the state board of finance and the department, which they may do only if they have determined that the program is based upon sound engineering principles and is in the interest of industrial development.

(3) The loan does not exceed one hundred percent (100%) of the cost to the qualified entity of any approved program, the cost of the program to be based upon an estimate made by a competent engineering authority and approved by the department.

(4) The qualified entity has agreed to furnish assurance, satisfactory to the state board of finance and the department, that it will operate and maintain the program, after completion, in a satisfactory manner.

(b) The state board of finance and the department shall authorize the making of a loan to any small business investment company or the state corporation under this chapter only if:

(1) the small business investment company, minority enterprise small business investment company or the state corporation has loaned to or invested in a business located in an enterprise zone for a purpose directly related to the enterprise zone an amount that is at least twice the amount of the requested loan; and

(2) the small business investment company or state corporation has submitted an application, before the beginning of the phase out period of the enterprise zone, to the state board of finance and the department that shows the amount of the loan requested and any other information that is requested by the state board of

finance and the department.  
*As added by Acts 1980, P.L.8, SEC.6. Amended by P.L.23-1983, SEC.5.*

#### **IC 4-4-8-6**

##### **Participation in program or project by entity; share of cost**

Sec. 6. The qualified entity may provide labor, equipment, and materials from any source at its disposal for such a program, and participation in accomplishment of the project or projects may be evaluated by the state board of finance and the department and may be computed as a part or all of the share of cost which the qualified entity is required to pay toward the total cost of the project or projects for which the loan is obtained. When participation as described in this section is authorized, it must be under direction of the governing body, and when any cash amounts are included in the qualified entity's share of total cost, such cost amounts shall be provided in the usual and accepted manner for the financing of the affairs of the qualified entity. Costs of engineering and legal services to the borrower may be regarded as a part of total cost of the project.

*As added by Acts 1980, P.L.8, SEC.6.*

#### **IC 4-4-8-7**

##### **Priority rating of applicant for loan; basis**

Sec. 7. The state board of finance and the department shall determine and ascribe to any applicant for a loan a priority rating, which rating shall be based primarily on the need of the qualified entity for any such proposed program or on the need of the small business investment company, minority enterprise small business investment company or state corporation for the loan as such need is related to the needs of other applicants for loans. The qualified entities, small business investment companies, minority enterprise small business investment company or state corporation having the highest priority rating shall be given first consideration in making loans under this chapter, which loans shall be made in descending order as shown by the priority ratings.

*As added by Acts 1980, P.L.8, SEC.6. Amended by P.L.23-1983, SEC.6.*

#### **IC 4-4-8-8**

##### **Loans; restrictions; ordinance requirement**

Sec. 8. (a) A loan made under this chapter is subject to the following restrictions:

- (1) The repayment period may not exceed fifteen (15) years.
- (2) The interest rate is to be set by the state board of finance at the time of approving the loan.
- (3) All interest reverts to the revolving fund created by this chapter.
- (4) The loan must be repaid in installments including interest on the unpaid balance according to a repayment schedule approved by the state board of finance for that loan. However, upon the approval of the state board of finance, the repayment of principal may be deferred for a period not to exceed two (2) years.
- (5) Subject to subsection (b) the repayment of the loan may be

limited to a specified revenue source of the qualified entity and, if limited, is not a general obligation of the unit and is payable solely from the specified revenue source.

(6) If the qualified entity levies a tax to repay the loan, the first installment of the loan is due from funds received from the first levy.

(7) If prepayment of the loan is made, no penalty may be charged.

(b) A qualified entity may borrow money under this chapter only pursuant to an ordinance adopted under IC 36-1-3-6 as follows:

(1) If the qualified entity is a city, town, or county, by the qualified entity.

(2) If the qualified entity is an economic development commission, by the city, town, or county that established the commission.

(3) If the qualified entity is a special taxing district established by the city, town, or county, by the city, town, or county that established the special taxing district.

(4) If the qualified entity is a special taxing district that was not established by a city, town, or county, by the county in which the special taxing district is located.

If repayment of the loan is to be from a specified revenue source under subsection (a)(5), the ordinance must state the revenue source and must state that the qualified entity is not obligated to pay the principal or interest on the loan except from the specified revenue source. An ordinance may not provide for repayment from a specified revenue source if the repayment would impair the qualified entity's contract with an owner of outstanding obligations payable from the specified revenue source.

(c) Notwithstanding any other law, the qualified entity may enter into loans under this chapter without obtaining the approval of any other body.

*As added by Acts 1980, P.L.8, SEC.6. Amended by P.L.10-1984, SEC.2; P.L.19-1985, SEC.3; P.L.19-1988, SEC.2.*

#### **IC 4-4-8-9**

##### **Revenue to pay annual loan installment and interest; levy of tax on personal and real property**

Sec. 9. Any qualified entity receiving a loan under this chapter may levy an annual tax on personal and real property located within its geographical limits for industrial development purposes, in addition to any other tax authorized by statute to be levied for such purposes, at such rate as will produce sufficient revenue to pay the annual installment and interest on any loan made under this chapter. Such a tax may be in addition to the maximum annual rates prescribed by IC 6-1.1-18, IC 6-1.1-18.5, IC 6-1.1-19, and other statutes.

*As added by Acts 1980, P.L.8, SEC.6. Amended by P.L.73-1983, SEC.4.*

#### **IC 4-4-8-10**

##### **Failure to repay monies lent; action to recover**

Sec. 10. (a) If a qualified entity fails to make repayment of money lent under this chapter or is in any way indebted to the fund for any

amounts incurred or accrued, the amount payable may be:

- (1) withheld by the auditor of state as set forth in the loan agreement with the qualified entity from any money payable to the qualified entity and transferred to the fund; or
- (2) recovered in an action by the state on relation of the department, prosecuted by the attorney general, in the circuit or superior court of the county in which the qualified entity is located.

(b) If the state corporation or a small business investment corporation or a minority enterprise small business investment company fails to make repayment of money lent under this chapter or is in any way indebted to the fund for any amounts incurred or accrued, the amount payable may be recovered in an action by the state on relation of the department, prosecuted by the attorney general, in the circuit or superior court of the county in which the state corporation or small business investment corporation or a minority enterprise small business investment company is located.

*As added by Acts 1980, P.L.8, SEC.6. Amended by P.L.23-1983, SEC.7; P.L.10-1984, SEC.3; P.L.19-1985, SEC.4; P.L.19-1988, SEC.3.*

#### **IC 4-4-8-11**

##### **Appropriation**

Sec. 11. There is appropriated annually to the department from the general fund of the state, from money not otherwise appropriated, an amount sufficient to administer this chapter, subject, however, to the approval of the state budget committee.

*As added by Acts 1980, P.L.8, SEC.6.*

#### **IC 4-4-8-12**

##### **Sale of notes or other debt obligations issued by county, city, or town; deposit of proceeds; legal investments**

Sec. 12. (a) The department, with the approval of the state board of finance, may sell to any person (including the board for depositories) the notes or other debt obligations issued by any county, city, or town under this chapter or IC 6-1.1-39 for any borrowing from the industrial development fund under this chapter.

(b) Any sale by the department of a note or other debt obligation of a county, city, or town as authorized by subsection (a) shall be made:

- (1) without recourse against the department, the state board of finance, or the industrial development fund; and
- (2) upon the other terms and conditions that the department, with the approval of the state board of finance, establishes.

(c) Any purchaser of a note or other debt obligation succeeds to all the rights, entitlements, conditions, and limitations under the note or other debt obligation. However, IC 4-4-8-10 does not apply to any note or other debt obligation that has been sold under subsection (a).

(d) After a sale of a note or other debt obligation the department, the state board of finance, and the industrial development fund have no right, title, or interest in or to the note or debt obligation.

(e) The proceeds from any sale shall be deposited in the industrial development fund to be used exclusively for the purpose of this

chapter.

(f) For industrial development projects (as defined in IC 4-4-10.9-11(a)) that have a cost of the project (as defined in IC 4-4-10.9-5) greater than one hundred million dollars (\$100,000,000), the department may coordinate any loan to a county, city, or town under this chapter that is to be funded under IC 6-1.1-39 with a simultaneous or successive sale of the note or other debt obligation issued or to be issued by the county, city, or town to evidence the borrowing under this chapter. For such a coordinated or simultaneous lending and sale, the sale proceeds may be applied to the funding of the loan to the county, city, or town.

(g) Notes or other debt obligations of any county, city, or town that may be sold by the department under this section are declared to be legal investments for:

- (1) all insurance companies and associations and other persons carrying on an insurance business; and
- (2) all banks, bankers, banking associations, trust companies, savings associations including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business.

These entities may invest their funds, including capital, in these notes or other debt obligations, notwithstanding any law to the contrary.

*As added by P.L.24-1987, SEC.2. Amended by P.L.19-1988, SEC.4.*